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OBLON, SPIVAK, MCCLELLAND, MAIER & NEUSTADT, P.C.
1940 DUKE STREET
ALEXANDRIA, VA 22314

EXAMINER

MARCHESCHI, MICHAEL A

ART UNIT

PAPER NUMBER

1755

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Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/009,351

Applicant(s)

BANCON ET AL.

Examiner

Michael A Marcheschi

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 23-44 is/are pending in the application.
- 4a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☒ Claim(s) 23-44 is/are rejected.
- 7) ☐ Claim(s) ____ is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on ____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on ____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some * c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. ____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449) Paper No(s) 3.
- 4) ☐ Interview Summary (PTO-413) Paper No(s) ____.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other:

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The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless --

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 23, 24, 27 and 40-42 are rejected under 35 U.S.C. 102(b) as anticipated by or, in the alternative, under 35 U.S.C. 103(a) as obvious over either (1) Fukuda (453), (2) Huber et al., or (3) Padberg et al.

Fukuda (453) teaches in column 4, line 11-column 6, line 58, the figure and the claims, an abrasive grinding wheel produced by placing an abrasive mixture into a mold, placing a reinforcing materials over the abrasive material and placing another abrasive mixture over the reinforcing material to produce a layered body, and heating and compressing the layered body. It is also stated that at least one reinforcing sheet is interposed between adjacent abrasive layers.

Huber et al. teach in column 2, line 40-column 4, line 25 and the figures, an abrasive grinding wheel produced by placing an abrasive mixture into a mold, placing a reinforcing materials over the abrasive material and placing another abrasive mixture over the reinforcing material to produce a layered body, and heating and compressing the layered body. It is also

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shown that at least one reinforcing sheet is used and is interposed between adjacent abrasive layers.

Padberg et al. teach in column 4, line 51-column 5, line 10, the figure and the claims, an abrasive grinding wheel produced by placing an abrasive mixture into a mold, placing a reinforcing materials over the abrasive material and placing another abrasive mixture over the reinforcing material to produce a layered body, and heating and compressing the layered body. It is also shown that at least one reinforcing sheet is interposed between adjacent abrasive layers.

The claimed invention is anticipated by the references because said references teach methods which comprise superimposing at least two layers of constituents, heating and pressing the layers. The instant claims do not define what is meant by a "blank" and the description on page 3, lines 26-28 only define this (the blank) as a layer of a constituent that can be manipulated, seized and moved by hand or by a machine. The examiner is interpreting this to mean an abrasive mixture because an abrasive mixture meets the criteria of a "blank" defined on page 3, lines 26-28. An abrasive mixture can be manipulated, seized and moved by hand or by a machine. **In view of this, the abrasive mixture of the references reads on the claimed blank in the absence of any evidence showing the contrary and therefore the reference anticipates the process claims.** With respect to the product, a reinforcing material is not a dense material but rather contains holes through the sheet (i.e. weave material) and it is the examiners positions that when the abrasive mixture is applied over the reinforcing material of the references, the abrasive mixture will inherently be distributed within the holes of the reinforcing material in the absence of any evidence showing the contrary. Applicants use process limitations to define the product and "product-by-process" claims do not patentably distinguish the product even though

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made by a different process. *In re Thorpe* 227 USPQ 964. In view of the this, the references anticipate the grinding wheel claims.

In the alternative, no patentable distinction is seen to exist between the references and the claimed invention in the absence of any evidence showing the contrary. Finally, if appropriate, Reversing the order of steps in a process does not impart patentability when no unexpected result is obtained. Ex parte Rubin (POBA 1959) 128 U.S.P.Q. 440, Cohn v. Comr. Pats. (DCDC 1966) 251 F Supp 378, 148 U.S.P.Q. 486.

Claims 28, 29, 31, 32, 33, 38, 39, 43 and 44 are rejected under 35 U.S.C. 103(a) as being unpatentable over either (1) Fukuda (453), (2) Huber et al., or (3) Padberg et al.

The above claims all relate to an assembly line to produce the grinding wheel.

All of the above references teach methods which comprise superimposing at least two layers of constituents, heating and pressing the layers. The instant claims do not define what is meant by a "blank" and the description on page 3, lines 26-28 only define this (the blank) as a layer of a constituent that can be manipulated, seized and moved by hand or by a machine. The examiner is interpreting this to mean an abrasive mixture because an abrasive mixture meets the criteria of a "blank" defined on page 3, lines 26-28. An abrasive mixture can be manipulated, seized and moved by hand or by a machine. **In view of this, the abrasive mixture of the references reads on the claimed blank, thus a machine for making the blanks reads on a mixing machine which is clearly within the scope of the references in the absence of any evidence showing the contrary.** As defined above, the instant claims all relate to an assembly line to produce the grinding wheel and it is the examiners position that the use of an assembly

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line having a blank making station (mixing station), a layer-lying station (i.e. for the reinforcement and additional abrasive mixture), a heating station and a pressing station is well within the level of ordinary skill in the art. In other words, all the references teach the claimed steps and the use of an assembly line to accomplish said steps is obvious to the skilled artisan. In view of this, claims 28, 29, 31, 32 and 33 are obvious. With respect to claims 38 and 39 (the structure of the press), the references teach a press, in general, and it is the examiner's position that this makes obvious the claimed press because **"A generic disclosure (of a press) renders a claimed species (specific structure of the press) prima facie obvious. *Ex parte George* 21 USPQ 2d 1057, 1060 (BPAI 1991); *In re Woodruff* 16 USPQ 2d 1934; *Merk & Co. v. Biocraft Lab. Inc.* 10 USPQ 2d 1843 (Fed. Cir. 1983); *In re Susi* 169 USPQ 423 (CCPA 1971)".** In addition, one skilled in the art would have found the claimed press structure obvious in the absence of any evidence showing the contrary. With respect to claim 43, the thickness of the grinding wheel is obvious to the skilled artisan in view of the end use of said grinding wheel. In addition, the thickness is not seen to provide any patentable distinction over these references. Finally, with respect to claim 44, it is the examiner's position that the mixing of the abrasive/binder material can be viewed as the first zone in the references and the second zone can be viewed as the assembly (layer-laying) station, thus meeting the claimed limitations

Claims 23, 24, 27 and 40-41 are rejected under 35 U.S.C. 102(b) as anticipated by or, in the alternative, under 35 U.S.C. 103(a) as obvious over Shoemaker.

Shoemaker teaches in column 2, lines 7-75 the figure and the claims, an abrasive grinding wheel produced by placing an abrasive mixture into a mold, placing a reinforcing materials over

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the abrasive material and placing another abrasive mixture over the reinforcing material to produce a layered body, and heating and compressing the layered body. It is stated that first an abrasive mixture and a first reinforcing material are molded (compressed) to form a first layer followed by the application of a second layer that comprises an abrasive.

The claimed invention is anticipated by the reference because said reference teaches a method which comprise superimposing at least two layers of constituents, heating and pressing the layers. The reference teaches that first an abrasive mixture and a reinforcing material are molded (compressed) to form a first layer and it is the examiners position that this first step of **the reference reads on the claimed blank**. With respect to the product, a reinforcing material is not a dense material but rather contains holes through the sheet (i.e. weave material) and it is the examiners positions that when the abrasive mixture is applied over the reinforcing material of the reference, the abrasive mixture will inherently be distributed within the holes of the reinforcing material in the absence of any evidence showing the contrary. Applicants use process limitations to define the product and "product-by-process" claims do not patentably distinguish the product even though made by a different process. *In re Thorpe* 227 USPQ 964. In view of the this, the reference anticipates the grinding wheel claims.

In the alternative, no patentable distinction is seen to exist between the reference and the claimed invention in the absence of any evidence showing the contrary. Finally, if appropriate, Reversing the order of steps in a process does not impart patentability when no unexpected result is obtained. Ex parte Rubin (POBA 1959) 128 U.S.P.Q. 440, Cohn v. Comr. Pats. (DCDC 1966) 251 F Supp 378, 148 U.S.P.Q. 486.

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Claims 25, 26, 28, 29, 30-39, 42-44 are rejected under 35 U.S.C. 103(a) as being unpatentable over Shoemaker.

The above reference teach a method which comprises superimposing at least two layers of constituents, heating and pressing the layers. The reference teaches that first an abrasive mixture and a first reinforcing material are molded (compressed) to form a first layer (**first step**) followed by the application of a second layer that comprises an abrasive and compressing the layered structure. Although it is not literally stated that binder is used in the first step, it is the examiners position that the application of a binder will optimize the bonding of the abrasive, thus its use is obvious to the skilled artisan. With this being obvious, the first step **of the reference reads on the claimed blank, thus a machine for making the blanks reads on a press for compressing the abrasive/reinforcing material defined in the first step which is clearly within the scope of the references in the absence of any evidence showing the contrary.**

The leveling aspect is also obvious and well within the level of ordinary skill in the art depending on the desired thickness of the layer. In view of this, the limitations of claims 25 and 26 are obvious. Instant claims 28, 29 and 30-37 all relate to an assembly line to produce the grinding wheel and it is the examiners position that the use of an assembly line having a blank making station, a layer-lying station (i.e. for the reinforcement and additional abrasive mixture), a heating station and a pressing station is well within the level of ordinary skill in the art. In other words, all the references teach the claimed steps and the use of an assembly line to accomplish said steps is obvious to the skilled artisan. In view of this, the above claims are obvious. With respect to claims 38 and 39 (the structure of the press), the reference teach a press, in general, and it is the examiners position that this makes obvious the claimed press

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because "A generic disclosure (of a press) renders a claimed species (specific structure of the press) prima facie obvious. *Ex parte George* 21 USPQ 2d 1057, 1060 (BPAI 1991); *In re Woodruff* 16 USPQ 2d 1934; *Merk & Co. v. Biocraft Lab. Inc.* 10 USPQ 2d 1843 (Fed. Cir. 1983); *In re Susi* 169 USPQ 423 (CCPA 1971)". In addition, one skilled in the art would have found the claimed press structure obvious in the absence of any evidence showing the contrary. With respect to claim 42, the use of an additional reinforcement is obvious to the skilled artisan in order to make the grinding wheel stronger. With respect to claim 43, the thickness of the grinding wheel is obvious to the skilled artisan in view of the end use of said grinding wheel. In addition, the thickness is not seen to provide any patentable distinction over these references. Finally, with respect to claim 44, it is the examiners position that the first step of the reference can be viewed as the first zone and the second zone can be viewed as the assembly (layer-laying) station, thus meeting the claimed limitations

Claims 23, 27, 40, 41 and 43 are rejected under 35 U.S.C. 102(b) as anticipated by or, in the alternative, under 35 U.S.C. 103(a) as obvious over White et al.

White et al. teaches in the abstract, column 2, line 40-column 3, line 68, the figures and the claims, an abrasive grinding wheel produced by assembling several layers of a non-woven fabric impregnated with an abrasive mixture.

The claimed invention is anticipated by the reference because said references teach methods which comprise superimposing at least two layers of constituents, heating and pressing the layers. The instant claims do not define what is meant by a "blank" and the description on page 3, lines 26-28 only define this (the blank) as a layer of a constituent that can be

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manipulated, seized and moved by hand or by a machine. The examiner is interpreting this to mean a non-woven impregnated fabric because said fabric meets the criteria of a "blank" defined on page 3, lines 26-28. The fabric can be manipulated, seized and moved by hand or by a machine. **In view of this, the non-woven impregnated fabric of the references reads on the claimed blank in the absence of any evidence showing the contrary and therefore the reference anticipates the process claims.** With respect to the product, the reference states that the fabric is impregnated with the abrasive, thus it is the examiners position that this reads the abrasive being distributed within the holes of the reinforcing material in the absence of any evidence showing the contrary. Applicants use process limitations to define the product and "product-by-process" claims do not patentably distinguish the product even though made by a different process. *In re Thorpe* 227 USPQ 964. In view of the this, the references anticipate the grinding wheel claims.

In the alternative, no patentable distinction is seen to exist between the references and the claimed invention in the absence of any evidence showing the contrary. Finally, if appropriate, Reversing the order of steps in a process does not impart patentability when no unexpected result is obtained. Ex parte Rubin (POBA 1959) 128 U.S.P.Q. 440, Cohn v. Comr. Pats. (DCDC 1966) 251 F Supp 378, 148 U.S.P.Q. 486.

Claims 28, 29, 31, 32, 33, 38, 39 and 44 are rejected under 35 U.S.C. 103(a) as being unpatentable over White et al.

The above claims all relate to an assembly line to produce the grinding wheel.

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The above reference teaches a method which comprise superimposing at least two layers of constituents, heating and pressing the layers. The instant claims do not define what is meant by a "blank" and the description on page 3, lines 26-28 only define this (the blank) as a layer of a constituent that can be manipulated, seized and moved by hand or by a machine. The examiner is interpreting this to mean a non-woven impregnated fabric because said fabric meets the criteria of a "blank" defined on page 3, lines 26-28. The fabric can be manipulated, seized and moved by hand or by a machine. **In view of this, the non-woven impregnated fabric of the references reads on the claimed blank, thus a machine for making the blanks reads on a impregnation device which is clearly within the scope of the references in the absence of any evidence showing the contrary.** As defined above, the instant claims all relate to an assembly line to produce the grinding wheel and it is the examiners position that the use of an assembly line having a blank making station (mixing station), a layer-lying station (i.e. for the reinforcement and additional abrasive mixture), a heating station and a pressing station is well within the level of ordinary skill in the art. In other words, all the references teach the claimed steps and the use of an assembly line to accomplish said steps in obvious to the skilled artisan. In view of this, claims 28, 29, 31, 32 and 33 are obvious. With respect to claims 38 and 39 (the structure of the press), the reference teach a press, in general, and it is the examiners position that this makes obvious the claimed press because **"A generic disclosure (of a press) renders a claimed species (specific structure of the press) prima facie obvious. *Ex parte George* 21 USPQ 2d 1057, 1060 (BPAI 1991); *In re Woodruff* 16 USPQ 2d 1934; *Merk & Co. v. Biocraft Lab. Inc.* 10 USPQ 2d 1843 (Fed. Cir. 1983); *In re Susi* 169 USPQ 423 (CCPA 1971)".** In addition, one skilled in the art would have found the claimed press structure obvious in the

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absence of any evidence showing the contrary. Finally, with respect to claim 44, it is the examiners position that the impregnation of the fabric can be viewed as the first zone in the reference and the second zone can be viewed as the assembly (layer-laying) station, thus meeting the claimed limitations

Claims 23, 24, 27 and 40-41 are rejected under 35 U.S.C. 102(b) as anticipated by or, in the alternative, under 35 U.S.C. 103(a) as obvious over Fukuda (148).

Fukuda (148) teaches in column 2, line 54-column 4, line 33, the figures and the claims, an abrasive grinding wheel produced by placing an abrasive mixture into a mold, placing a reinforcing materials over the abrasive material and placing another abrasive mixture over the reinforcing material to produce a layered body, and heating and compressing the layered body.

The claimed invention is anticipated by the reference because said references teach methods which comprise superimposing at least two layers of constituents, heating and pressing the layers. The instant claims do not define what is meant by a "blank" and the description on page 3, lines 26-28 only define this (the blank) as a layer of a constituent that can be manipulated, seized and moved by hand or by a machine. The examiner is interpreting this to mean an abrasive mixture because an abrasive mixture meets the criteria of a "blank" defined on page 3, lines 26-28. An abrasive mixture can be manipulated, seized and moved by hand or by a machine. **In view of this, the abrasive mixture of the references reads on the claimed blank in the absence of any evidence showing the contrary and therefore the reference anticipates the process claims.** With respect to the product, a reinforcing material is not a dense material but rather contains holes through the sheet (i.e. weave material) and it is the examiners positions

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that when the abrasive mixture is applied over the reinforcing material of the references, the abrasive mixture will inherently be distributed within the holes of the reinforcing material in the absence of any evidence showing the contrary. Applicants use process limitations to define the product and "product-by-process" claims do not patentably distinguish the product even though made by a different process. *In re Thorpe* 227 USPQ 964. In view of the this, the references anticipate the grinding wheel claims.

In the alternative, no patentable distinction is seen to exist between the references and the claimed invention in the absence of any evidence showing the contrary. Finally, if appropriate, Reversing the order of steps in a process does not impart patentability when no unexpected result is obtained. Ex parte Rubin (POBA 1959) 128 U.S.P.Q. 440, Cohn v. Comr. Pats. (DCDC 1966) 251 F Supp 378, 148 U.S.P.Q. 486.

Claims 28, 29, 31, 32, 33, 38, 39, 42, 43 and 44 are rejected under 35 U.S.C. 103(a) as being unpatentable over Fukuda (148).

The above claims all relate to an assembly line to produce the grinding wheel.

The above reference teaches a method which comprise superimposing at least two layers of constituents, heating and pressing the layers. The instant claims do not define what is meant by a "blank" and the description on page 3, lines 26-28 only define this (the blank) as a layer of a constituent that can be manipulated, seized and moved by hand or by a machine. The examiner is interpreting this to mean an abrasive mixture because an abrasive mixture meets the criteria of a "blank" defined on page 3, lines 26-28. An abrasive mixture can be manipulated, seized and moved by hand or by a machine. **In view of this, the abrasive mixture of the references reads**

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on and makes obvious the claimed blank, thus a machine for making the blanks reads on and makes obvious a mixing machine which is clearly within the scope of the references in the absence of any evidence showing the contrary. As defined above, the instant claims all relate to an assembly line to produce the grinding wheel and it is the examiners position that the use of an assembly line having a blank making station (mixing station), a layer-lying station (i.e. for the reinforcement and additional abrasive mixture), a heating station and a pressing station is well within the level of ordinary skill in the art. In other words, all the references teach the claimed steps and the use of an assembly line to accomplish said steps is obvious to the skilled artisan. In view of this, claims 28, 29, 31, 32 and 33 are obvious. With respect to claims 38 and 39 (the structure of the press), the reference teaches a press, in general, and it is the examiners position that this makes obvious the claimed press because "A generic disclosure (of a press) renders a claimed species (specific structure of the press) prima facie obvious. *Ex parte George* 21 USPQ 2d 1057, 1060 (BPAI 1991); *In re Woodruff* 16 USPQ 2d 1934; *Merk & Co. v. Biocraft Lab. Inc.* 10 USPQ 2d 1843 (Fed. Cir. 1983); *In re Susi* 169 USPQ 423 (CCPA 1971)". In addition, one skilled in the art would have found the claimed press structure obvious in the absence of any evidence showing the contrary. With respect to claim 42, the use of an additional reinforcement is obvious to the skilled artisan in order to make the grinding wheel stronger. With respect to claim 43, the thickness of the grinding wheel is obvious to the skilled artisan in view of the end use of said grinding wheel. In addition, the thickness is not seen to provide any patentable distinction over these references. Finally, with respect to claim 44, it is the examiners position that the mixing of the abrasive/binder material can be viewed as

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the first zone in the references and the second zone can be viewed as the assembly (layer-laying) station, thus meeting the claimed limitations

In view of the teachings as set forth above, it is the examiners position that the references reasonably teach or suggest the limitations of the rejected claims.

"A reference is good not only for what it teaches but also for what one of ordinary skill might reasonably infer from the teachings. *In re Opprecht* 12 USPQ 2d 1235, 1236 (CAFC 1989); *In re Bode* USPQ 12; *In re Lamberti* 192 USPQ 278; *In re Bozek* 163 USPQ 545, 549 (CCPA 1969); *In re Van Mater* 144 USPQ 421; *In re Jacoby* 135 USPQ 317; *In re LeGrice* 133 USPQ 365; *In re Preda* 159 USPQ 342 (CCPA 1968)". In addition, "A reference can be used for all it realistically teaches and is not limited to the disclosure in its preferred embodiments" See *In re Van Marter*, 144 USPQ 421.

Evidence of unexpected results must be clear and convincing. *In re Lohr* 137 USPQ 548. Evidence of unexpected results must be commensurate in scope with the subject matter claimed. *In re Linder* 173 USPQ 356.

The references cited on the 1449 have been reviewed by the examiner and are considered to be art of interest since they are cumulative to or less than the art relied upon in the above rejections.

Any foreign language documents submitted by applicant has been considered to the extent of the short explanation of significance, English abstract or English equivalent, if appropriate.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Michael Marcheschi whose telephone number is (703) 308-3815.

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The examiner can be normally be reached on Monday through Thursday between the hours of 8:30-6:00 and every other Friday between the hours of 9:30-6:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiners supervisor, Mark L. Bell, can be reached at (703) 308-3823.

Amendments can also be sent by fax to the numbers set forth below:

For after final amendments, the fax number is (703) 872-9311;

For non-final amendments, the fax number is 703 872-9310.

Any inquiry of a general nature or relating to the status of this application should be directed to the Group receptionist whose telephone number is (703) 308-0661.

Michael Marcheschi

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PRIMARY EXAMINER

8/03

